

HEARING DATE: APRIL 8, 2021 – 1:30 PM

LANDOWNER: HERITAGE POINTE GOLF REVITALIZATION LTD./BARRY EHLERT

APPELLANTS: KIMBERLY SCHAMP, TIFFANY GORDON

APPEAL AGAINST: DEVELOPMENT PERMIT 20D 136 FOR THE DEVELOPMENT OF A
DRIVING RANGE STRUCTURE WITH INDOOR AMENITY SPACE

SUBJECT PROPERTY: PLAN 0512789, BLOCK 3, LOT 1; SE 05-22-29 W4M & SW 05-22-29
W4M (THE "PROPERTIES")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, R. TAYLOR, R. PERCIFIELD, T.
MILLS, D. MACDONALD AND DEVELOPMENT APPEAL BOARD CLERK, S. BOGART

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Development Authority for Foothills County, the Appellants, the Applicant, and all other interested parties with respect to the appeal filed by the Appellants in accordance with Section 685 of the *Municipal Government Act* against the approval of development permit 20D 136 for the Development of a Driving Range Structure with Indoor Amenity Space on PLAN 0512789, BLOCK 3, LOT 1; SE 05-22-29 W4M & SW 05-22-29 W4M (The "Properties");

The Subdivision and Development Appeal Board for Foothills County (the "Board") has determined the application approved under development permit 20D 136 is a permitted use under the Foothills County Land Use Bylaw 60/2014 and that no variance to the Land Use Bylaw was granted. Therefore, no appeal lies from the approval of Development Permit 20D 136 and the appeal cannot be successful.

The Decision of the development authority to issue Development Permit 20D 136 for the development of a Driving Range Structure with Indoor Amenity Space on PLAN 0512789, BLOCK 3, LOT 1; SE 05-22-29 W4M & SW 05-22-29 W4M (The "Properties") is upheld subject to the following REVISED conditions at the request of the Developer to address concerns raised by Ravine Villas Condominium Corporation and Summit Pointe Condominium Corporation with respect to impacts associated with the proposed development:

PRE-RELEASE CONDITIONS:

Pre-release conditions must be complied with before the development permit will be signed and issued. Failure to complete the pre-release condition(s) on or before August 31, 2021, will see this approval be deemed null and void, unless a time extension is issued under agreement between the Development Authority and the Applicant(s). It is the applicant's responsibility to provide proof of completion for each condition.

1. The approved Boundary Adjustment and Subdivision for the creation of the proposed 11.1 +/- acre parcel shall be registered by Alberta Land Titles prior to the issuance of this development permit;
2. The applicant shall submit a comprehensive Storm Water Management Plan for the proposed site development, including provisions for snow removal/relocation for the

proposed Driving Range Facility and parking areas, to the satisfaction of the Public Works Department;

3. The applicant shall provide a Site Drainage Plan and Lot Grading Plan, including design specification for the Driving Range Landing Area and any proposed berming and/or recontouring, to the satisfaction of the Public Works Department;
4. The applicant shall provide a comprehensive Site Screening Plan to be reviewed and accepted by the Development Authority. The Site Screening Plan shall be consistent with the screening agreement reached with the Ravine Villas Condominium Corporation and the Summit Pointe Condominium Corporation as outlined in Associated Engineering Plan 3889-00-C-101 Revision B Sheet 1 presented at the appeal hearing and as follows:
 - a) The development will be carried out in accordance with the Associated Engineering Plan 3889-00-C-101 Revision B Sheet 1, as presented at the appeal hearing and:
 - (i) The applicant will plant coniferous trees at the locations marked in green in the areas highlighted in orange in that plan;
 - (ii) The applicant will plant trees on the south side of the development (closest to the Ravine Villas plan area) generally as shown in the plan, and must reasonably consider the comments of the Ravine Villas Condo Board in determining the final locations and types of trees;
 - (iii) The applicant will make the berm in the areas highlighted in orange as large as is reasonably possible without interfering with the applicant's operations or the golf course operations;
 - (iv) The applicant will review the location of the cart path and determine whether it may be located on the other side of the berm in the areas highlighted in orange without unduly interfering with the applicant's operations and, if so, place the cart path there; and
 - (v) The applicant will minimize the net height on the North side of the development to the minimum required to protect golfers and guests from ball strike issues.
 - b) The development shall use a lower-intensity lighting system (still sufficient for use of the ball tracking system), and any replacements to the lighting system shall be of comparable lower intensity.

CONDITIONS:

Please note that the following requirements must be completed within the twenty-four (24) month completion period for this development permit unless a time extension is issued under agreement between the Development Authority and the Applicant(s). Failure to complete the conditions of approval will see the development permit deemed null and void.

1. The applicant shall maintain the development in accordance with all conditions of approval and plans that have been acknowledged by the municipality to be appropriate. Any revisions and/or additions to use of this land shall not proceed except under benefit of appropriate approvals;
2. The proposed Driving Range Facility Building shall have a maximum footprint size of 17,000+/- sq.ft. and may have a total roof area of up to 20,800+/- sq.ft. including any cantilevers, projections, and/or covered outdoor spaces attached to the approved building;
3. The proposed Driving Range Facility Building shall not exceed a maximum height of 12 meters (39.27 ft.) from grade to peak, which is the maximum permitted within the Recreation District;
4. The proposed boundary/safety netting shall not exceed a maximum height of 25 meters (82 ft.), as acknowledged by Council;

5. No advertising signage is permitted to be located on the proposed safety netting;
6. The applicant shall obtain and maintain a valid annual Business License from the Foothills County;
7. The applicant shall submit a comprehensive Emergency Response Plan/Fire Safety Plan, including acknowledgement of monitoring the Foothills alert system and Alberta Emergency Alert, and requirements during adverse weather events, to the satisfaction of the Foothills Emergency Services and Fire Departments;
8. The applicant is responsible for adhering to the accepted Stormwater Management Plan to the satisfaction of the Public Works Department. Any revision to said plan is required to be submitted to the County for review and acceptance prior to implementation;
9. The applicant shall obtain any necessary building and safety code permits from the County, to the discretion of the Safety Codes Officer. The development is required to illustrate compliance with the requirements of the National Building Code, and Provincial Plumbing, Electrical, and Fire Codes at all times. Requirements may include but not be limited to: an engineer's confirmation of completion, illustration of: water for firefighting and fire department connections meeting NFPA 1142 requirements and testing, travel distances, fire extinguishers, emergency and exit lighting, and water closet requirements based upon occupancy load (including barrier free). Occupancy for public use shall not be granted until authorized by the Safety Codes Officer and the Fire Inspector. It is the applicant's responsibility to provide proof of such to the Development Authority;
10. The applicant shall provide detailed specifications for all exterior lighting and signage for the proposed Driving Range Facility, to be reviewed and acknowledged by the County as appropriate prior to installation. Except where specifically acknowledged by the County, all installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw;
11. All parking stalls, laneways, aisles, and loading spaces shall be provided to the size and specifications as outlined in Section 9.19 of the Land Use Bylaw. The applicant is advised that the Development Authority accepts the proposed parking plan as illustrated within the submitted site plan, and as acknowledged by Council under Bylaw 65/2020; however, it is the applicant's responsibility to ensure that sufficient parking is available within the subject property, and/or adjacent lands owned by the developer, at all times. Parking within public road right-of-ways is prohibited. Should the landowner fail to provide sufficient parking resulting in vehicles in attendance to the subject lands being parked within neighbouring road right-of-ways, it will be the landowner's responsibility to reduce operating capacity to align with available parking capacity, or obtain appropriate approval to allow for additional parking;
12. Hours of operation, whereby customers/clients may attend the property, are approved between 10:00am and 11:00pm;
13. The applicant shall provide written confirmation from Corix to ensure sufficient capacity for potable water and wastewater services, and the ability to tie into existing services to the satisfaction of Corix and the Foothills County Public Works Department;
14. The applicant shall obtain updated Emergency Address Signage for the existing Corix Water Service Building, Proposed Driving Range Structure, and Golf Course Maintenance Building on the subject and adjacent lands. Emergency address signage shall be installed and maintained, to the satisfaction of Emergency Services;
15. Prior to the County acknowledging completion of the development, it is the responsibility of the applicant to submit as-built drawings and/or completion certificates, executed by the designated professional(s), confirming that all improvements are consistent with the submitted plans and designs, as accepted by the County;

ADVISORY REQUIREMENTS:

The following requirements are provided by Foothills County to inform the applicant(s)/landowner(s) of their necessity and do not form part of the approval description or conditions of approval. It is the sole responsibility and liability of the applicant(s)/landowner(s) to ensure adherence with these requirements. These requirements are not appealable to the Subdivision & Development Appeal Board.

1. All structures shall be located as per the accepted site plans, which illustrate that the proposed Driving Range Facility adheres to Municipal and Provincial setback requirements from the boundaries of the legally titled property. Under Bylaw Amendment 65/2020, The Foothills County Council acknowledged a minimum side and/or rear setback requirement on the subject properties of 1.5 meters from any adjacent Recreation District parcel;
2. The applicant is advised to contact respective utility providers for services installation;
3. The applicant is advised that all requirements and restrictions as identified by ATCO Pipelines with regard to the ATCO Transmission right-of-way on the subject property, must be adhered to, to the satisfaction of ATCO Pipelines;
4. The applicant is required to obtain any required authorization for the application, and to ensure compliance with all applicable codes of practice and regulations with respect to the use of pesticides and/or herbicides. Setbacks from wells and/or water bodies shall at all times be observed;
5. Absolutely, no portion of the Driving Range Facility shall be used as a residence or dwelling unit; this includes any overnight accommodations;
6. Except as acknowledged above, all signage shall be in accordance with Section 9.24 (Signage Control Regulations) of the Land Use Bylaw 60/2014;
7. The use of water in support of the Driving Range Facility, including but not limited to irrigation, and human consumption, shall at all times comply with the requirements and regulation of Alberta Environment and Alberta Health Services;
8. All waste materials are to be handled and disposed of under guidelines provided by governing Provincial regulatory bodies, at an approved waste disposal and/ or recycling site. There shall be no long-term storage of waste materials on the property, nor burning of waste materials on the property. Garbage and waste must be stored in weatherproof and animal proof containers that are required to be fully screened from neighbouring lands and roadways;
9. Road bans issued for Municipal road surfaces are to be adhered to at all times. Vehicles entering or exiting the property shall travel only at the permitted legal weights;
10. No offensive noise, vibration, smoke, dust, odor, heat, glare, electrical, and/or radio disturbance is to be detectable beyond the boundary of the lot;
11. There is to be no removal of topsoil from the said lands. It is the responsibility of the applicant to ensure that the natural drainage on the property is maintained except as acknowledged in the accepted Storm Water Management Plan, Site Drainage Plan, and/or Lot Grading Plan;
12. It is the landowners' responsibility to ensure that approved Occupancy Load for the Driving Range Building is not exceeded at any given time, in accordance with the Building, Safety, and Fire Codes;
13. Parking for the physically handicapped shall be provided as per the provincial regulations and shall be considered as part of the total number of stalls required for the project. A minimum of 2% of the total number of stalls, being one (2) stall, shall be provided and clearly identified for use by the physically disabled;
14. All loading areas and laneways must be kept free of all debris, materials and/or equipment, and is the landowners responsibility to ensure access for fire department apparatus is provided for at all times;

15. All loading spaces shall be designed and located so that all vehicles using that space can be parked and maneuvered entirely within the bounds of the subject property without backing to or from adjacent public roadways;
16. The applicants indemnify and hold harmless the County against the cost of any claims or actions, or awards for loss or damage to the Owner(s) arising from the use of the subject property;
17. It is the landowner's responsibility to provide notification to the Development Authority upon completion of the development;
18. The issuance of a development permit by the County does not relieve the landowners of the responsibility of complying with all other relevant County bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
19. The applicants shall be responsible for payment of any professional costs including legal fees that may be incurred by the County with respect to the implementation of this permit;

Note: *This Development Permit shall thereafter be null and void if the development or use is abandoned for a period of six months.*

Note: *The conditions of this Development Permit must be met and adhered to at all times. Fines and/or Enforcement action may occur if operating outside of the Development Permit.*

FINDINGS OF FACT

1. The subject property is an 11.1+/- acre Recreation District parcel consisting of a portion of two existing parcels located within the Hamlet of Heritage Pointe.
2. On December 16, 2020, Foothills County Council considered a land use application on the subject property and granted first reading to Bylaw 65/2020, authorizing the redesignation of the subject properties from Agricultural District to Recreation District, as well as a Site Specific amendment to the Recreation District land use rules in the Land Use Bylaw to allow the existing golf course development and facilities on the subject properties, and to allow for the proposed development of a Driving Range Structure with Indoor Amenity Space accessory to the Golf Course use, as a permitted use. The development permit application was submitted concurrently with the land use application.
3. On January 27, 2021, Council granted third and final reading to Bylaw 65/2020.
4. On February 23, 2021, the Development Authority for Foothills County approved development permit 20D 136 for the development of a Driving Range Facility with Indoor Amenity Space on PLAN 0512789, BLOCK 3, LOT 1; on a portion of SE 05-22-29 W4M and a portion of SW 05-22-29 W4M.
5. An appeal was received from K. Schamp and T. Gordon, as joint appellants against the approval of development permit 20D 136 on March 15, 2021.

ISSUES

1. Development of a Driving Range Facility

- (i) The Development Officer submitted that within the Definitions section of the Land Use Bylaw, there are two definitions for a permitted use:
 - Permitted Use - General means the use of land or building provided for in this

bylaw for which the approving authority must, if the application conforms with this bylaw, issue a development permit with or without conditions.

- Permitted Use - Site Specific means a use provided for in a site-specific use bylaw for which the approving authority must, if the application otherwise conforms to this bylaw, issue a development permit subject to the limitations outlined in the site-specific use bylaw.

- (ii) The Development Officer submitted that within the interpretation section of the Land Use Bylaw (Section 2), "Permitted Use" is defined as the use of land, a building or buildings provided for in this bylaw that must comply with all provisions of the land use bylaw unless a variance is provided. The approving authority must issue a development permit with or without conditions as provided for in the Land Use Bylaw for a permitted use. All permitted uses require the issuance of a development permit unless identified as "development permit not required" or exempt under this bylaw.
- (iii) The Development Officer outlined Section 5 of the Land Use Bylaw pertaining to the development permit Approval Process, which states that upon receipt of a complete development permit application for a permitted use, the development authority, being the Development Officer, shall approve, with or without conditions as provided in section 5.4, the application where the proposed development conforms to the provisions of the Land Use bylaw. Policy 5.3.2 states that if a development permit application for a permitted use requires a variance to any other provisions of the bylaw, the use is then considered a discretionary use and must be dealt with under the provisions for discretionary uses.
- (iv) The application is to allow for a Driving Range Facility with indoor amenity space, including covered driving range platforms, as well as a kitchen and dining room for food and drink services, washrooms, and other golf related services. The facility is proposed to be located on the existing driving range site, including a 20,800+/- square foot building as well as upgrades to the landing area, including berming, lot grading, landscaping, and illuminated targets, as well as, safety netting which is proposed along the east boundary of the landing zone, and revisions to the existing access and parking areas.
- (v) The proposed facility would support golf course related activities including private and public events for up to eighty (80) guests. Proposed hours of operation for the facility to be open to the public are between 10:00am and 11:00pm, seven days per week, and would operate year-round.
- (vi) The Development Officer displayed the original development permit Application which was presented to Council concurrently with the land use application. It outlined the specifics of the proposed development, including the number of stalls, the height of the building, the size and square footage of the building, the proposed uses for the common spaces within the building (kitchen, dining room, washroom, beverage services, etc.), parking specifications etc. The Development Officer confirms that renderings of the facility with the general lay-out and footprint of the building were shown to Council and anyone else in attendance at the Public Hearing on December 16, 2020. There have been no revisions made to the application since first reading to Bylaw 65/2020 was granted.
- (vii) The Development Officer noted the December 16, 2020 public hearing was properly circulated in the usual fashion, including by letters to area landowners, by advertising in two issues of the Western Wheel newspaper, and by including all of the Application information and links to view the hearing on the County website. Residents had the opportunity to attend and provide their input, as with any public hearing before Council. He further noted that there were members of the public in attendance at the Public Hearing and many of the Appellants' stated concerns were raised at that time (noise, traffic, lighting, etc.) and Council did take those concerns into consideration when making their original decision regarding the redesignation and site-specific amendment.

- (viii) The Development Officer submitted that the application for the development of a Driving Range Facility with Indoor Amenity Space, did not require a variance nor were any variances granted within the development permit approval, therefore, the application is a permitted use and the development authority **must** issue a development permit.
- (ix) The Development Officer noted that Section 685(3) of the *Municipal Government Act* outlined grounds for development appeal as follows: “no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1 (8), which addresses refusal due to submission of an incomplete application”.
- (x) The Development Officer explained that development permit 20D 136 was issued as a Permitted Use – Site Specific, in accordance with the uses outlined in Bylaw 65/2020 and all other provisions of the Land Use Bylaw. Provisions of the Land Use Bylaw were not varied and therefore, the application is not subject to appeal.
- (xi) The appellant, K. Schamp, submitted that she is speaking at the hearing on behalf of many residents (unnamed) of the Dunbow Road and Heritage Pointe areas who oppose the development as approved.
- (xii) The appellant submitted that while they do not oppose the facility itself, which has impressive amenities, the Appellants believe that the small Heritage Pointe Golf Course community is not a suitable location for such a facility.
- (xiii) The appellant submitted that the development permit approval was obtained under false pretenses, and that residents and Foothills County Council were misled about the size, scope and intent of the proposed facility which goes far beyond a simple “driving range” and is in fact a luxury mega-golf complex, or an entertainment complex on par with similar facilities in the United States.
- (xiv) The appellant referenced news media articles in which the applicant B. Ehlert and his agent K. Beunder refer to the facility as a “First of it’s kind year-round golf entertainment complex, unlike anything else in Canada” and which describe the proposed facility as being “modelled after, and using the same technology as, TopGolf locations in the United States”.
- (xv) The appellant quoted the definition of a Golf Course from the Land Use Bylaw (Section 10) as follows:
- 10.11.1 A golf course and/or driving range may be allowed: a. On lands considered to be of marginal quality for agricultural purposes due to such conditions as poor soil type or where there may be an abundance of surrounding incompatible non agricultural uses; b. Where the use is intended, designed and sized to primarily serve the surrounding and rural area; c. As a buffer between an agricultural operation and an existing or planned residential area or other use found to be incompatible with agricultural uses; and d. Where it is compatible with, and will not limit any agricultural operation.
- (xvi) The appellant does not believe that the application as submitted/approved conforms to the section outlined, and notes that the actual (original) driving range in its current format will be eliminated. In her opinion, the permit should have been issued under “Amusement & Entertainment Services” and/or “Drinking Establishments”.
- (xvii) The appellant spoke to a letter written by Foothills County Reeve Suzanne Oel and sent to Heritage Pointe residents on January 28, 2021 and quoted the Council resolution whereby Council approved Bylaw 65/2020. She disagrees with the statement that the development “will not be detrimental to the nature of the area and will not unduly interfere

- with neighbouring residential land uses or materially interfere with or affect the use, enjoyment, or value of neighbouring properties". She stated that it is her belief that there will be significant negative impacts on the surrounding community including reduced property values, particularly for the properties that back onto the new facility.
- (xviii) The appellant quoted from a document containing the minutes of a community meeting in which the applicant, B. Ehlert, acknowledged he should perhaps have engaged the community more prior to submitting his application for approval to the County and that he will be more forthcoming in the future regarding any upgrades at the Heritage Pointe golf course.
- (xix) The appellant quoted from a letter written by the applicant and mailed to Heritage Pointe residents indicating that the submission to the County was a "housekeeping issue", which the residents feel was misleading and downplayed the scope of the applicant's plans.
- (xx) The appellant requested that a video be shown to demonstrate the scope of the proposed facility. The Development Appeal Board and all present at the hearing were shown a Youtube video (2 mins 22 sec) titled "Welcome to Launchpad Calgary" found at www.barryehlert.com. The appellant feels that a comparison of this video with TopGolf marketing materials shows that they are the same.
- (xxi) The appellant noted that the parking plan incorporated into the application is inadequate and that if completed as proposed, the new facility will lead to significant parking issues at the Heritage Pointe Golf Course and within the neighboring community. She notes that there is "barely adequate" parking at present for peak times at the existing golf course, and that the new facilities will add to the parking strain. She notes that while the agent recommended 214 parking stalls, the County reduced the total number of stalls to 91.
- (xxii) The appellant submitted that while a formal Traffic Study was not a requirement of this development, the increased traffic on Dunbow Road is a significant concern. She notes that the current infrastructure of surrounding roadways and interchanges will be strained by the Launchpad facility.
- (xxiii) The appellant referred to the Advisory Requirements on the approved development permit, particularly with respect to Requirement #10, which reads: "*No offensive noise, vibration, smoke, dust, odor, heat, glare, electrical, and/or radio disturbance is to be detectable beyond the boundary of the lot*". She submitted that there will be both noise and light disturbance, not only as a result of the open-air building but also due to the lighting on the driving range and the landing area and/or low-level lighting on the targets, as well as the planned golf ball tracer technology. The applicant's agent has submitted that any light disturbance will be remedied by berming, however based on her research of TopGolf facilities and the Tracer technology, she is not satisfied that the lighting will be compliant with the Dark Sky Bylaw, Section 8.1 and 8.7. The system requires artificial light to work properly outside of daylight hours, and the lights need to be high enough to cover the entire ball flight of each shot. This will require lighting 50 meters from the bays and up to 30 meters high.
- (xxiv) The appellant submitted that in her opinion the application as "permitted use" was not appropriate and that there was insufficient community involvement in the original decision, for which she faults the applicants and the nature of their application.
- (xxv) The second appellant, T. Gordon, stated that she is a PGA golf professional, and she supports the idea of the Launchpad in general, however feels strongly that this style of facility does not belong in a small residential community, due to the associated noise, light, and traffic disturbances. She would support an upgrade to the existing driving range to add minor amenities such as more stalls, a snack bar, etc., but the scope of the proposed

Launchpad goes far beyond that. T. Gordon is compelled to appeal development permit 20D 136 to protect the community.

- (xxvi) Member of the gallery D. Cunningham stated that she agrees with the presentation by the appellant K. Schamp and is of the opinion that the Launchpad facility is an amusement/entertainment complex, not a golf facility. She also contends that the Dark Sky Bylaw has to date had very lax enforcement and there will be no way to address light disturbance if it is eventually caused by the building and/or targets.
- (xxvii) Member of the gallery B. Parker stated that she feels the same as D. Cunningham, that this facility does not belong in their high-end residential area. This type of development would be better suited to a commercial area. She is also in agreement with the statements made by the appellant, K. Schamp.
- (xxviii) Member of the gallery S. Evans stated that while the Launchpad facility is impressive, it does not belong in the small Heritage Pointe community.
- (xxix) Member of the gallery D. Vanderberg stated that her property backs onto the first hole of the golf course, so she is a directly impacted landowner. She notes that on November 25, 2020 their household received a letter from Foothills County notifying them of the upcoming Public Hearing (December 16, 2020), but chose not to attend, as they had been misled by a previous letter from the Applicant/Landowner, B. Ehlerl and felt that their attendance would not be required. She submitted that the Launchpad Facility is too large and does not belong in their housing development. She feels the Applicant/Landowner misled residents about the scope of the proposed development. Ms. Vanderberg went on to state that following the death of Division 6 Councillor Larry Spilak in November 2020 the community had no representation and no help, and that herself and other community members had to act as Councillors for themselves, which is unfair.
- (xxx) Member of the gallery D. Vanderberg stated that the remedy for concerns/complaints about the Launchpad facility once it is operational, will be through a call to Bylaw Enforcement, which is only available Monday to Friday during business hours and this is unsatisfactory. She does not agree that the use, enjoyment, and/or value of neighboring properties will not be impacted. She believes that there will be significant negative impacts.
- (xxxi) The applicant's agent J. Sykes submitted that the current development permit under appeal (20D 136, approved on February 23, 2021) does not differ from the original application that was brought before Council in December 2020. She notes that Council had in front of them the complete plans for this development, including a PowerPoint presentation that included drawings of the building, overall concept, etc. The application was approved as a permitted use by Council unanimously in December 2020, and that a Development Appeal Board hearing is not an appropriate forum to challenge a Council decision. Further, many of the issues raised at this hearing are components considered and approved by Council at the Land Use stage. The agent emphasized that this development permit is for a permitted use, with no relaxations.
- (xxxii) The applicant's agent J. Sykes noted that throughout the application process, the applicant B. Ehlerl has been working with the community to share information and obtain feedback from affected residents, in particular with the condominium boards in the golf course community, including the Ravine Villas and the Summit Pointe boards. J. Sykes noted that while she will ask that the Development Appeal Board uphold the original decision by the Development Officer, she is asking on behalf of the applicant to add additional conditions to the approved permit to reflect the discussions and agreements reached with the condominium boards. These conditions are as follows:

- (1) The development will be carried out in accordance with the Associated Engineering Plan 3889-00-C-101 Revision B Sheet 1, as presented at the appeal hearing and:
 - (a) The applicant will plant coniferous trees at the locations marked in green in the areas highlighted in orange in that plan;
 - (b) The applicant will plant trees on the south side of the development (closest to the Ravine Villas plan area) generally as shown in the plan, and must reasonably consider the comments of the Ravine Villas Condo Board in determining the final locations and types of trees;
 - (c) The applicant will make the berm in the areas highlighted in orange as large as is reasonably possible without interfering with the applicant's operations or the golf course operations;
 - (d) The applicant will review the location of the cart path and determine whether may be located on the other side of the berm in the areas highlighted in orange without unduly interfering with the applicant's operations and, if so, place the cart path there; and;
 - (e) The applicant will minimize the net height on the North side of the development to the minimum required to protect golfers and guests from ball strike issues.
 - (2) The development shall use a lower-intensity lighting system (still sufficient for use of the ball tracking system), and any replacements to the lighting system shall be of comparable lower intensity.
- (xxxiii) The applicant/landowner B. Ehlert stated that he is passionate about the golf industry and owns several golf courses. He believes that the golf industry has been in decline and needs to evolve and adapt for the future, which is why he is pursuing the Launchpad facility. Based on his market research, a facility of this nature will draw new demographics and new players to the game.
- (xxxiv) The applicant/landowner noted that the Launchpad facility at the Heritage Pointe Golf Course will be just over 13,500 square feet in size (footprint), whereas the TopGolf facilities referenced by many of the speakers at today's hearing exceed 100,000 square feet and are therefore in no way comparable.
- (xxxv) The applicant/landowner stated that he has been developing relationships with the residents directly adjacent to the golf course, whom he has met with on-site and made himself available at various times to discuss the plans and any resident concerns at length, as well as the concessions he is prepared to make. It is his opinion that many of the surrounding residents support what he plans to develop. He noted that some of the facilities that he has visited in the United States are also located within communities, in some cases closer to residences than this one will be.
- (xxxvi) The applicant/landowner submitted that the Heritage Pointe Golf Course is a large property – over 400 acres in size and currently requires capital improvements. This will require additional revenue streams to enhance and maintain existing amenities such as the clubhouse, greens, cart paths, irrigation, among others, and to ensure that the golf course remains profitable and viable into the future.
- (xxxvii) The applicant's agent J. Sykes displayed an updated site plan (Engineering Plan 3389-00-C-1, Revision B, Sheet 1) outlining the berming and screening plans that the applicant/landowner will be implementing, following discussions with the condominium boards adjacent to the golf course property. The berm has been raised so that it is larger and higher, while the building elevation has been lowered to minimize visual impact for neighboring homes. The berm will also dampen sound and block light. The netting has

also been reduced in these plans. She reiterated the agreed upon conditions for the berms and screening (see (xxxii) above). This particular rendering was not shared with Council in December 2020, as it was created after the Council hearing in order to create specific landscaping/screening plans once the development had been approved, however a comparable rendering was included in the original PowerPoint presentation. J. Sykes noted that the applicant/landowner has committed to implementing these informal agreements, whether or not the Development Appeal Board opts to include them as additional conditions of the development permit approval.

- (xxxviii) The applicant's agent noted that the condo board presidents also discussed lighting with the applicant, particularly with regard to the tracer technology and lighted targets. She submitted that the applicant B. Ehlert has been working with the manufacturer to minimize brightness and attendant light disturbance and has modified the placement of some of the lighting at the request of the residents. The light intensity has been reduced from approximately 10 candle feet to roughly half that much. Any future replacement lighting will also be at a comparable level of intensity.
- (xxxix) The applicant's agent refuted the suggestion by the appellants that the proposed development is not a "golf course" use. She does not believe that the proposed driving range facility fits the definition of "Amusement and Entertainment Services", which includes such things as carnivals and go-cart tracks.
- (xl) The applicant's agent noted the assertion that the standard for parking facilities have been relaxed is incorrect. The parking plan approved as part of the development permit conforms to the requirements of the Land Use Bylaw. She also noted that Condition #11 of the development permit will require the applicant to scale back operations if there is insufficient parking to accommodate actual attendance volumes.
- (xli) The applicant's agent submitted there has been no evidence brought forth by the appellants to support their claim that noise disturbance from the facility is inevitable. The design of the development, as well as the berms will ensure that noise is minimized.
- (xlii) The applicant's agent submitted there has also been no evidence brought forth by the appellants to support their claim that traffic on Dunbow Road and/or other area roadways will be impacted to the degree that it causes safety concerns. She notes that the traffic survey completed by Traffic Engineer Glen Pardoe at Bunt & Associates, confirms that even when calculating with very conservative assumptions, the intersection of Heritage Pointe Drive/Dunbow Road will continue to operate well within acceptable parameters with no significant changes to intersection delay or queuing at this location.
- (xlili) The applicant/landowner B. Ehlert addressed the appellants' assertion the driving range will no longer be open to the public. He stated there will be between 12 and 16 stalls at the facility for public use, compared to the 20 stalls that are available at the current driving range.
- (xliv) The applicant's agent J. Sykes displayed two letters of support received by the applicant for the driving range facility submitted by the presidents of the adjacent condominium boards, W. Barritt (Ravine Villas) and D. Francis (Summit Pointe). These letters indicate that if the berming and screening are implemented as agreed upon, they have no opposition to the development.
- (xlv) The applicant's agent concluded that the opposition voiced today is with regard to the land use application, not to the development permit, as the development permit is for a permitted use. At today's hearing, the Board is not deciding on land use, but only whether the approval of development permit 20D 136 was appropriate.

- (xlvi) Member of the gallery D. Francis representing the Summit Pointe Condo Corp. submitted that he has spent a tremendous amount of time working with the applicant/landowner B. Ehlert to address concerns and negotiate conditions to be added to the development permit. He emphasized that the support of the Summit Pointe Condo board is wholly dependent on the negotiated conditions being added in as conditions of approval for the development permit.
- (xlvii) Member of the gallery W. Barritt, representing the Ravine Villas Condo Corp., concurs with D. Francis that much time and work have been devoted to collaborating and reaching a negotiated agreement with the applicant/landowner B. Ehlert to address the concerns of the Ravine Drive residents by way of the added conditions outlined in (xxxii) above. The residents he represents are very pleased that lower intensity lighting will be used, the netting will be lower etc.

The hearing was closed at 4:26 pm.

Reasons for Decision

Based on the evidence heard from the appellants, the applicant, affected parties and the development authority for Foothills County, the Board determined that the application for a Driving Range Facility with Indoor Amenity Space as a permitted use on PLAN 0512789, BLOCK 3, LOT 1; SE/SW 05-22-29 W4M was considered by Foothills County Council on December 16, 2020 and authorized under Bylaw 65/2020 which received third and final reading on January 27, 2021.

Section 685 (3) of the *Municipal Government Act* states in part that “*no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted*”. The Board determined the application as approved under development permit 20D 136 was considered in its entirety by Council and authorized under Bylaw 65/2020, and as such, provisions of the Land Use Bylaw were not relaxed, varied or misinterpreted when approving development permit 20D 136; the development permit application was for the same proposed development approved by Council as a site-specific permitted use.

In consideration of the above, the Board determined the application approved under development permit 20D 136 is, therefore, a permitted use with no relaxation or variances and no appeal lies. There was no misinterpretation of the Land Use Bylaw. Therefore, the appeal cannot be successful.

The Board further determined the *Municipal Government Act* does not permit the Board to deal with the validity of an appeal of a permitted use as a preliminary matter. The Board, therefore, had the jurisdiction to hear the merits of the appeal in order to determine if an appeal lies.

Section 687(3)(c) of the *Municipal Government Act* states that the Board “may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;” The Board considered the additional conditions of approval requested by the applicant and his agent, and determined that the conditions were being requested, with the agreement of surrounding landowners (affected parties) in order to address concerns the development would unduly interfere with or affect the use, enjoyment or value of neighbouring properties. As such, the Board exercised its discretion over the appeal to amend the conditions of development permit 20D 136 to include the suggested conditions. The Board accepts the surrounding landowners would not

have supported the applicants in this appeal without the applicant's consent to the additional conditions of approval.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 8th day of April, 2021 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION**Foothills County Land Use Bylaw 60/2014****2 INTERPRETATIONS**

2.1.1 Compliance with the provisions in this Bylaw shall be interpreted and applied as follows:

- a. "SHALL" is a directive term that indicates that the actions outlined are mandatory and therefore must be complied with, without discretion;
- b. "SHOULD" is a term that provides direction to strive to achieve the outlined action but is not mandatory. When the provision is directed to the developer, the onus is on the applicant to justify why the desired action/result is not proposed and/or will not be achieved;
- c. "MAY" is a discretionary term, providing notification that the provision in question can be enforced if the MD chooses to do so, and is usually dependent on the particular circumstances of the specific parcel and application;
- d. "PERMITTED USE" means the use of land, a building, or buildings provided for in this Bylaw that must comply with all provisions of the Land Use Bylaw unless a variance is provided. The Approving Authority must issue a Development Permit with or without conditions as provided for in this Bylaw for a permitted use. All permitted uses require the issuance of a Development Permit, unless identified as "Development Permit not required" or exempt under this Bylaw;
- e. "DISCRETIONARY USE" means the use of land or a building provided for in this Bylaw for which the Approving Authority may issue a Development Permit with or without conditions as provided for in this Bylaw;"
- f. "EXEMPT" means development that does not require a Development Permit if it meets all provisions of this Bylaw.

2.1.2 Where a provision involves two (2) or more conditions, regulations or events connected by a conjunction, the following shall apply:

- a. "And" means all the connected items shall apply in combination;
- b. "Or" indicates that the connected items may apply singly or in combination; and
- c. "Either-or" indicates the items shall apply singly but not in combination.

2.1.3 Words used in the singular include the plural and vice-versa.

2.1.4 When a word is used in the masculine it will refer to either gender.

2.1.5 All measurements in this Bylaw are metric. In the case of any conflict between information expressed in metric units and in imperial units, the metric shall govern.

2.1.6 In the case of any conflict between a number written in numerals and a number written in letters, the number written in numerals shall govern.

2.1.7 In the case of any conflict between the text of this Bylaw and any maps or drawings used to illustrate any aspect of this Bylaw, the text shall govern. 2.1.8 Words, phrases, and terms not defined in this section may be given their definition in the Safety Codes Act. Other words shall be given their usual and customary meaning. 2.1.9 Where reference is made to other legislation or documents, this refers to the legislation and documents as may be amended from time to time.

2.5 DEFINITIONS

2.5.1 Words and expressions used in this Bylaw (but not defined herein) that are defined in Part 17 of the Act have the meaning given to them in Part 17 of the Municipal Government Act so far as the context in which such words and expressions are used in this Bylaw will permit.

- PERMITTED USE – GENERAL means the use of land or building provided for in this Bylaw for which the Approving Authority must, if the application conforms to this Bylaw, issue a Development Permit with or without conditions.
- PERMITTED USE – SITE SPECIFIC means a use provided for in a Site-Specific Use Bylaw for which, the Approving Authority must, if the application otherwise conforms to this Bylaw, issue a Development Permit subject to the limitations outlined in the Site-Specific Use Bylaw.

5.3 DECISION ON DEVELOPMENT PERMIT APPLICATIONS

5.3.1 Upon receipt of a complete Development Permit application for a permitted use, the Development Authority shall approve, with or without conditions as provided in Section 5.4, the application where the proposed development conforms to the provisions of this Bylaw.

5.3.2 Notwithstanding Section 5.3.1, if a Development Permit application for a permitted use that requires a variance to any other provision of the Bylaw, the use is considered a Discretionary use and the application must be dealt with under all provisions for Discretionary uses under this Bylaw

MUNICIPAL GOVERNMENT ACT (ALBERTA)**Grounds for appeal**

685(1) If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645, the person applying for the permit or affected by the order under section 645 may appeal the decision in accordance with subsection (2.1).

(1.1) A decision of a development authority must state whether an appeal lies to a subdivision and development appeal board or to the Municipal Government Board.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal the decision in accordance with subsection (2.1).

(2.1) An appeal referred to in subsection (1) or (2) may be made

- (a) to the Municipal Government Board
 - (i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is the subject of the application
 - (A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,
 - (B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,
 - (C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy

Hearing and decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1) (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

	<u>NAME</u>	<u>CAPACITY</u>
1.	D. Granson	Foothills County - Development Officer
2.	H. Hemingway	Foothills County – Director of Planning
3.	B. Ehler/Heritage Pointe Golf	Applicant
4.	J. Sykes	Agent for the Applicant
5.	K. Schamp	Appellant
6.	T. Gordon	Appellant
7.	D. Cunningham	Gallery
8.	B. Parker	Gallery
9.	S. Evans	Gallery
10.	D. Vanderberg	Gallery
11.	D. Francis	Gallery
12.	W. Barritt	Gallery
13.	E. Allum	Gallery

APPENDIX "B"

I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

1.	Submission from the Foothills County Development Officer (February 23, 2021 Decision)
2.	Notice of Appeal submitted by K. Schamp/T Gordon (March 15, 2021)
3.	"Document #4" - Letter of Opposition from K. Schamp (attachment to Notice of Appeal)
4.	"Document #3" - Letter of Opposition from K. Scamp (submitted April 6, 2021)
5.	Photo 1 – Heritage Pointe Golf Site Plan (Engineering Plan 3889-00-C-101 Revision B Sheet 1 – Submission from Applicants Agent (April 6, 2021)
6.	Bunt & Associated Letter Re: Traffic Overview – Submission from Applicants Agent (April 6, 2021)
7.	Letter of Opposition – Submission from D. & P. Vanderberg (April 6, 2021)
8.	Letter of Opposition – Submission from B. & J. Parker (April 6, 2021)
9.	Letter of Opposition – Submission from K. & D. Cunningham (April 6, 2021)
10.	"Document #1" - Letter from Appellant K. Schamp (April 6, 2021)
11.	Letter of Opposition – Submission from D. & P. Edwards (April 7, 2021)
12.	"Document #2" – Submission from K. Schamp – Top Tracer Light Installation Specifications (submitted April 7, 2021)
13.	"Document #5" – January 28, 2021 Letter from Reeve S. Oel to Residents - Submission from K. Schamp (submitted April 7, 2021)
14.	"Document #6" – November 2, 2020 Applicant Letter to Community – Submission from K. Schamp (submitted April 7, 2021)
15.	"Document #7" – Community Meeting Minutes dated February 14, 2021 – Submission from K. Schamp (April 7, 2021)
16.	"Document #8" - Application for Development, Township Planning – Submission from K. Schamp (April 7, 2021)
17.	"Document #9" – Q&A Email D. Frederickson/K. Beunder – Submission from K. Schamp (April 7, 2021)
18.	Email (Launchpad Web Advertising) – Submission from K. Schamp (April 8, 2021)

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Presentation by the Foothills County Development Officer